DEPARTMENT OF STATE REVENUE

02-20130024.LOF

Letters of Findings: 02-20130024
Corporate Income Tax
For the Tax Years Beginning June 1, 2008, through 2010

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Corporate Income Tax-Apportionment Factors: "Partnership Income/Activities."

Authority: IC § 6-3-1-19; IC § 6-3-2-2; IC § 6-3-2-2.2; IC § 6-8.1-5-1; IC § 6-3-4-10; IC § 6-3-4-11; IC § 23-16-4-3; Park 100 Dev. Co. v. Ind. Dep't of State Revenue, 429 N.E.2d 220 (Ind. 1981); Five Star Concrete, L.L.C. v. Klink, Inc. 693 N.E.2d 583 (Ind. Ct. App. 1998); Hunt Corp. v. Dep't of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999); Chief Industries v. Indiana Dep't of Revenue, 792 N.E.2d 972 (Ind. Tax Ct. 2000); May Dep't Stores Co. v. Dep't of State Revenue, 749 N.E.2d 651 (Ind. Tax Ct. 2001); Riverboat Development, Inc. v. Indiana Dep't of State Revenue, 881 N.E.2d 107 (Ind. Tax Ct. 2008); Vodafone Americas Inc. v. Indiana Dep't of State Revenue, 991 N.E.2d 626 (Ind. Tax Ct. 2013); 45 IAC 3.1-1-106; 45 IAC 3.1-1-153.

Taxpayer protests the Department's adjustments to its apportionment factors in its June 1, 2008, to December 31, 2008, "short" tax year adjusted gross income tax return to include Taxpayer's share of the partnership's Indiana income and activities.

STATEMENT OF FACTS

Taxpayer is a corporation. Taxpayer wholly owned a limited liability company headquartered in Kentucky, which Taxpayer chose for tax purposes to treat as an entity disregarded from Taxpayer, operating as a "division" of Taxpayer (hereinafter "Taxpayer's Division"). Taxpayer's Division directly owned and operated a fabrication plant in central Indiana from January 1, 1999, until March 9, 2009, according to the "[Kentucky Corp] to [Taxpayer's Division] Contribution Agreement" dated January 1, 1999, and Taxpayer's filings made with the Indiana Secretary of State Office. Taxpayer also wholly owned a subsidiary corporation headquartered in Delaware (hereinafter "Delaware Corporation").

A "Kentucky limited partnership" (hereinafter "Partnership") operated another fabrication plant in southern Indiana. Delaware Corporation owned one percent of Partnership. Taxpayer's Division owned the remaining ninety-nine percent of Partnership. In other words, Taxpayer owned 100 percent of the two entities that owned 100 percent of Partnership, which was conducting business in Indiana.

Taxpayer and Delaware Corporation appointed the same individuals to serve in their four director positions and the same individuals to serve in each of their seven officer positions. Taxpayer stated that Delaware Corporation's corporate officers approved all major decision of Partnership and that all the plant operations managers, including the southern Indiana plant operated by Partnership, reported to the president of Delaware Corporation. Also, Taxpayer's Division, pursuant to its operating agreement, is directly managed and controlled by Taxpayer, and, therefore, has appointed all the same individuals as Taxpayer to serve in its four director positions and the same individuals to serve in each of its seven officer positions. Therefore, all four entities–Taxpayer, Taxpayer's Division, Delaware Corp., and Partnership–report to, are managed by, and are controlled by the same management team.

The Indiana Department of Revenue's ("Department") audit report states that Partnership was dissolved in May 2008. Taxpayer's Certificate of Merger states that Partnership was merged into Taxpayer effective December 31, 2008. As a result of this merger and reorganization, Taxpayer was the sole surviving entity and directly owned all of the business operations. As of January 2009, Taxpayer directly owned and operated both the southern Indiana fabrication plant formally operated by Partnership and the central Indiana fabrication plant formally operated by Taxpayer's Division.

For 2008, Partnership issued Taxpayer's Division, the disregarded limited liability company of Taxpayer, a federal K-1. This federal K-1 designated Taxpayer's Division as a general partner of Partnership with a ninety-nine percent ownership of Partnership. The federal K-1 reported several million dollars of ordinary business income from the Partnership's business operations–which were, in part, conducted in Indiana–as Taxpayer's Division's portion of Partnership's ordinary business income from operations for the 2008 tax year.

Taxpayer's adjusted gross income tax return for the tax period from June 1, 2008, through December 31, 2008, reported income prior to apportionment, but also reported zero Indiana apportionment factors and, therefore, zero Indiana income. However, in Taxpayer's adjusted gross income tax returns for the 2009 and 2010 tax years, Taxpayer reported income prior to apportionment and Indiana apportionment factors, which resulted in taxable Indiana income. Taxpayer's reported apportionment factors for the 2009 and 2010 tax years included those activities from the southern Indiana and central Indiana fabrication plants that were, as of January 2009, directly owned by Taxpayer.

The Department conducted an audit of Taxpayer's income tax returns for the tax periods from June 1, 2008, through December 31, 2010. As a result of the audit, the Department determined that additional Indiana adjusted gross income tax was due for the June 1, 2008, to December 31, 2008, "short" tax year and issued a proposed assessment for the additional tax and interest. The Department determined that Taxpayer's 2008 short year return–which reported zero Indiana income and zero Indiana apportionment factors for this period–was incorrect, and adjusted Taxpayer's 2008 short year adjusted gross income and apportionment factors to include activities of the two Indiana fabrication plants. The Department also determined that the Taxpayer's returns for the 2009 and 2010 tax years had properly included the two Indiana fabrication plants' activities and made no adjustments to the 2009 and 2010 tax year returns. Taxpayer protested the Department's adjustment to its apportionment factors for the 2008 short year return. An administrative hearing was conducted, and this Letter of Findings results. Additional facts will be supplied as required.

I. Corporate Income Tax-Apportionment Factors: "Partnership Income/Activities."

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

The Department made adjustments to Taxpayer's June 1, 2008, to December 31, 2008, "short" tax year income tax return. Taxpayer's return as filed reported that its Indiana apportionment factor was zero. The Department's audit report states that it is adjusting "Taxpayer's Indiana apportionment percentage from the reported 0[percent] to 9.49[percent] based upon the apportionment information that was provided by the taxpayer" during the audit. The adjustments to Taxpayer's apportionment were made to include activities of the central Indiana fabrication plant activities and the southern Indiana fabrication plant. The Department determined that while Taxpayer had properly included its income from Partnership and Taxpayer's Division's in the return's computation of Indiana adjusted gross income prior to apportionment, Taxpayer had failed to include the activities from the two Indiana fabrication plants (the central Indiana plant operated by Taxpayer's Division and the other southern Indiana plant operated by Partnership) in Taxpayer's apportionment factors. Therefore, the Department made adjustments to Taxpayer's apportionment factors to include Taxpayer's Division's central Indiana fabrication plant's activities and Taxpayer's partner share of Partnership's activities, which included the activities of Partnership's southern Indiana fabrication plant in the apportionment factors. These adjustments to Taxpayer's apportionment factors led to an increase in Taxpayer's taxable income apportioned to Indiana that resulted in the assessment of additional adjusted gross income tax for the 2008 short year.

Taxpayer protests the adjustments the Department made to its apportionment factor for the 2008 short year and asserts that the adjustments were incorrect. Taxpayer concludes that it does not have income that is reportable to Indiana because the income from its ownership of the intangible member/partner interest in Partnership should be sourced to Kentucky and not Indiana.

Before continuing the analysis the Department notes the following statutory and regulatory Indiana law that is relevant to this discussion:

IC § 6-3-1-19 provides:

> (a) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and

which is not, within the meaning of this chapter, a corporation or a trust or an estate. The term also includes a limited liability company that is treated as a partnership for federal income tax purposes.
(b) The term "partner" means a member of a partnership.

45 IAC 3.1-1-106, in relevant part, states:

> **(a) A partnership is not subject to the adjusted gross income tax. The partners will include their share of partnership income whether distributed or undistributed on their separate or individual returns.**
> . . .
> (c) **A corporate partner will report its share in accordance with section 153 of this rule**.

(**Emphasis added**).

45 IAC 3.1-1-153 further states:

> (a) A corporate partner's share of profit or loss from a partnership will be included in its federal taxable income and therefore generally subject to the same rules as any other adjusted gross income.
> (b) If the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the corporate partner and its share of the partnership's factors for any partnership year ending within or with the corporate partner's income year, with the following modifications:
> (1) The value of property which is rented or leased by the corporate partner to the partnership or vice versa shall, with respect to the corporate partner, be excluded from the property factor of the partnership or eliminated to the extent of the corporate partner's interest in the partnership, whichever the case may be, in order to avoid duplication.
> (2) Intercompany sales between the corporate partner and the partnership shall be eliminated from the corporate partner's sales factor as follows:
> (A) Sales by the corporate partner to the partnership to the extent of the corporate partner's interest in the partnership.
> (B) Sales by the partnership to the corporate partner not to exceed the corporate partner's interest in all partnership sales.
> (c) If the corporate partner's activities and the partnership's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:
> (1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.
> (2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.
> (d) A partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.
> (e) After determining the amount of business income attributable to Indiana under subsection (c), the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income.

Taxpayer, as the reporting entity for Taxpayer's Division, is a corporate partner in Partnership. Partnership, as required by IC § 6-3-4-10, files an Indiana partnership return, Form IT-65, reporting all of its activities as "business income" attributable to Indiana under apportionment and is required to issue Form IT-65 IN K-1s ("Indiana K-1s") to its corporate partners.

Pursuant to IC § 6-3-4-11(a), Taxpayer, the corporate partner, is liable for Partnership's adjusted gross income tax in its separate or individual capacity and is required to report its portion of Partnership's Indiana business activity on Taxpayer's Indiana adjusted gross income tax return. Since Taxpayer owns ninety-nine percent of Partnership, Taxpayer is to report its ninety-nine percent partner share of Partnership's income and activities on Taxpayer's Indiana adjusted gross income tax return. Taxpayer's affiliated C corporation–owning the other one percent of Partnership–will also report its one percent partner share of Partnership's income and activities on its Indiana adjusted gross income tax return.

Taxpayer claims that the Department's adjustments to its return are incorrect. Taxpayer argues that Partnership's apportionment factors should not be included in the Indiana returns based upon Riverboat Development, Inc. v. Indiana Dep't of State Revenue, 881 N.E.2d 107 (Ind. Tax Ct. 2008) and Chief Industries v. Indiana Dep't of Revenue, 792 N.E.2d 972 (Ind. Tax Ct. 2000). Taxpayer contends that Riverboat Development, Inc. and Chief Industries stand for the general proposition that a taxpayer with income to report from any pass-through entity is deemed to have received income from intangible property that is always allocated or sourced to the state of the taxpayer's commercial domicile under IC § 6-3-2-2.2(g). Taxpayer, therefore, citing to these two cases, claims that the ninety-nine percent interest it held in Partnership and, therefore, ninety-nine percent of the Indiana income of Partnership, is not attributable to Indiana but is to be allocated to Kentucky. Taxpayer further maintains that since the ninety-nine percent interest owned by Taxpayer is held as a "limited partner" interest, the Indiana income from ninety-nine percent interest is not reportable to Indiana by Taxpayer. Taxpayer supports this assertion by citing generally to Vodafone America's Inc. v. Indiana Dep't of State Revenue, 991 N.E.2d 626 (Ind. Tax Ct. 2013). Essentially, Taxpayer is arguing that it is an investor receiving dividends from an investment. Taxpayer's analysis is flawed.

First, Taxpayer is mistaken as in its application of Riverboat Development, Inc. and Chief Industries to Taxpayer's situation. As to the application of Riverboat Development, Inc, the Indiana Tax Court in Riverboat Development, Inc. found that the Kentucky S Corporation, that owned a minority membership interest in an Indiana LLC, had income from the Indiana LLC, "in the form of dividends from investments," which did not constitute Indiana source income to the Kentucky S Corporation. Riverboat Development Inc., 881 N.E.2d at 111. The court in Riverboat Development, Inc. reasoned that a nonresident S Corporation had a non-manager member interest in an Indiana LLC. The S Corporation itself had no presence in Indiana and, other than its intangible membership in the LLC, had no contact with Indiana. Ultimately, the court held that the LLC was not required to withhold taxes on behalf of the nonresident S Corporation, because the S Corporation lacked sufficient nexus with Indiana. The court based this conclusion on the S Corporation's limited role in the LLC's business activities, concluding that the S Corporation was merely a passive investor. Thus, the S Corporation received distributable income that was "dividends from investments" that is sourced to its state of residence under IC § 6-3-2-2.2. As explained below, the Riverboat Development, Inc. decision is distinguishable from this administrative protest.

The holding in Riverboat Development, Inc. reflected the Tax Court's determination that the taxpayer merely held a minority interest in the Indiana LLC, took no part in the day-to-day activities or management of the Indiana LLC, and had no other ties to Indiana beyond the minority investment in the LLC. However, unlike the distant "hands off" approach of the minority owners in Riverboat Development, Inc., Taxpayer in this case 1.) owned 100 percent of Partnership through two subsidiaries, and 2.) Taxpayer was directly involved in the management and general operations of these subsidiaries, which, in turn managed Partnership.

Taxpayer's 100 percent ownership of Partnership, through two other subsidiaries, is not disputed by the Taxpayer. Thus, the focus of this analysis must be Taxpayer's involvement in the management and/or control of Partnership as well as any other ties Taxpayer had to Indiana. The Department notes that according to the K-1s issued by Partnership to Taxpayer, Taxpayer was designated as a general partner in Partnership. Moreover, Partnership, Delaware Corporation, and Taxpayer are managed and controlled by the same people. Partnership, Delaware Corporation, and Taxpayer have appointed the same individuals to serve in each of their seven officer positions. That is, Partnership, Delaware Corporation, and Taxpayer have all engaged the same person as president, the same person as executive vice president, the same person as the second vice president, the same person as a third vice president the same person as chief financial officer, the same person as assistant chief financial officer, the same person as secretary/treasurer, and the same person as assistant treasurer. Accordingly, in this instance, the management activities of Partnership and Taxpayer, its corporate partner, are essentially one and the same because they were managed by the same seven officers. Due to the shared management between these entities, Taxpayer's argument that Taxpayer has no control in Partnership is without merit.

Based on the facts presented in this matter, it is clear that this case is more akin to the Vodafone decision rather than the Riverboat Development decision. Similar to the taxpayer in Vodafone, Taxpayer's interest in Partnership is far more than a mere limited and passive investor because Taxpayer owns and manages the day-to-day activities of Partnership. In Vodafone, the taxpayer, through various subsidiaries, had a minority ownership interest of an out-of-state partnership that generated Indiana income. Relying on the Riverboat Development case, the taxpayer argued that the income generated by the partnership was not subject to tax in Indiana and should be sourced to the partnership's home state. The Tax Court disagreed, noting that the taxpayer in Vodafone had limited, but substantial managerial control and income from Indiana business activities. Because the taxpayer participated in the management of the partnership in Vodafone and the income generated by the partnership was operational income when received by the taxpayer, the taxpayer was subject to taxation in Indiana.

Comparing the Vodafone decision to this protest, it is clear that the facts present an even stronger argument supporting the Department's assessments. In this case, the Taxpayer is the majority/100 percent owner of Partnership, and has total control over the management. Additionally, Taxpayer had additional ties to Indiana beyond the Partnership. For example, Taxpayer owned Taxpayer's Division which maintained a fabrication plant in Indiana during the years at issue. Accordingly, the relationship between the parties in Riverboat Development, Inc. and the type of income at issue is substantively different from the relationship between Taxpayer and Partnership. Instead, pursuant to the Vodafone decision, the income generated by Partnership was operational income when received by Taxpayer and subject to taxation in Indiana.

Taxpayer's reliance on Chief Industries is also flawed. As a preliminary matter, it should be noted that Chief Industries deals with a prior 1986 version of IC § 6-3-2-2. Chief Industries held that the sale of an out-of-state corporation's stock in a related corporation lacked an Indiana tax situs, and thus could not be subjected to Indiana's adjusted gross income tax even though the corporation has a business situs in Indiana. The Tax Court concluded that the corporation's activities at its Indiana situs during the tax year were unrelated to the sales of the stock. The court concluded:

> As a matter of law, the Court finds that the capital gains earned by Chief from its sales of Automotive common stock during the tax [year] had no tax situs in Indiana. Therefore, income from the stock sales is not "derived from sources within the state of Indiana" per section 6-3-2-2(a)(5). Lacking an Indiana source, the capital gains in question cannot be subjected to Indiana's adjusted gross income tax, as imposed by section 6-3-2-1(b). Chief Industries, 792 N.E.2d at 979.

The Tax Court's analysis in Chief Industries is a classic gross income tax "situs" analysis and addresses the central question of whether the income at issue in that case had anything to do with Indiana. As the court's analysis above demonstrates, the sale of stock in Chief Industries was not related to the taxpayer's business activities in Indiana. Under gross income tax analysis, as an out-of-state company, the taxpayer's sale of stock could have been deemed to be business income and still not be subject to tax in Indiana if the critical transactions relating to the income were not sitused in Indiana.

The same cannot be said about the current adjusted gross income tax regime under which this protest falls. In this case, Partnership's income derives from activities directly related to its Indiana business operations. The income derived from these Partnership business operations is business income, and therefore it is subject to formulary apportionment among all the states in which Taxpayer does business, including Indiana. Furthermore, even under Chief Industries' gross income tax analysis, the activities described in this current protest would have been sitused to Indiana and subject to adjusted gross income tax in Indiana.

Another case on point, as it involves a non-resident corporate partner's reporting of operational business partnership income, is Hunt Corp. v. Dep't of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999). In Hunt, the Tax Court found that "in order to determine what income is attributable to Indiana, it must first be determined whether the income sought to be attributed is business or non-business income." Id. at 771. The Tax Court stated that, "States do not have to evaluate each income generating activity of the corporate enterprise in order to determine whether the income gained from that activity is properly taxable by the state. Instead the state may look at all of the income gained by the corporate enterprise's business activity and determine the state's fair share of that total." Id. at 769. Additionally, in May Dep't Stores Co. v. Dep't of State Revenue, 749 N.E.2d 651, 656 (Ind. Tax Ct. 2001), the court further explained "[p]ursuant to Ind. Code § 6-3-2-2, for the purpose of calculating a corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while nonbusiness income is allocated to Indiana or another state." "[W]hether income is deemed business or nonbusiness income determines whether it is allocated to a specific state or whether it is apportioned between Indiana and other states wherein the taxpayer is conducting its trade or business." Id.

Finally, Taxpayer argues that the Department is ignoring the form of its entities and that the established form must be respected. As such, Taxpayer is seeking a result that is based upon its structure–a corporation's wholly owned disregarded entity owning a partner's share of another pass-through entity–that is not otherwise directly permitted under Indiana law. In other words, Taxpayer, a corporation, owning a disregarded limited liability company owing an interest in a Partnership, seeks to avoid its tax liability because the corporation is the entity reporting the income of the pass-through entities. Although Taxpayer is subject to tax based upon the Vodafone decision, it is worth noting that Taxpayer's form-over-function argument must also fail.

The Indiana Supreme Court discussed such a form-over-function situation in Park 100 Dev. Co. v. Ind. Dep't of State Revenue, 429 N.E.2d 220 (Ind. 1981). In Park 100, the Indiana Supreme Court was faced with a situation in which a partnership was itself a partner in a partnership and, on that ground sought to avoid Indiana taxes. Id. at 223. In other words, one pass-through entity was owned by another pass-through entity. The Indiana Supreme Court held that a partnership could not avoid its Indiana tax obligations by becoming a partner in a different partnership (essentially stacking partnerships to avoid tax) and funneling the business receipts through these pass-through entities. Id. at 223. Thus, using tiered pass-through entities to funnel income to another partner did not obviate the taxpayer's tax obligation. Id. The court reasoned that passing income through multiple layers of partnerships does not cancel the tax liability associated with the original partnership's income. Id. As the court explained, "[T]he legislature did not intend for a corporation to escape the corporate tax liability indirectly by forming a two-tiered partnership when it did not allow a corporation to escape that liability as a direct or first-tier partner." Id.

Like the taxpayer in Riverboat Development, Inc., the taxpayers in Park 100 owned a minority ownership interest in the pass-through entity generating the taxable income. Nevertheless, the tax liability still passed through to the owners. Moreover, the court was not persuaded by the fact that the tax liability stemmed from the taxpayer's intangible interest in a partnership. The court's ultimate concern was avoiding the creation of law that would lead to untenable results, such as avoiding tax liabilities by funneling income through a partnership. At no point in the Park 100 decision did the court suggest that the character of the income, and resulting tax liability, was dependent upon whether the taxpayer's ownership interest in the partnership was tangible or intangible in nature. Nor was there any reason for the court to consider the tangible or intangible nature of the ownership, because the focus was the character of the business income earned by the pass-through entity.

Additionally, in Five Star Concrete, L.L.C. v. Klink, Inc. 693 N.E.2d 583 (Ind. Ct. App. 1998), the Indiana Court of Appeals explained that LLCs are like partnerships, and like partnerships the "income 'passes through' the entity and is taxed to the member, an owner of an interest in the company." Id. at 586. The court was very specific–LLCs, like partnerships, pass-through income to their members to be taxed in the same manner as partnerships. The court also noted that there was no dispute that the company properly passed its income and tax liability to its owners. Id. Therefore, like the Park 100 decision, the end result is that the income and the related tax liability of flow through entities that are taxed as partnerships are the responsibility of the partners/members, and the manner in which the taxpayer chooses to define its ownership interest in the company is not relevant for purposes of applying the tax liability.

Alternatively, Taxpayer protests that the adjustments to its adjusted gross income tax return violate the United States Constitution. Notwithstanding that an administrative hearing is not the appropriate venue to address such assertions, the Department notes its disagreement that the adjustments made to its adjusted gross income tax returns are unconstitutional. However, because an administrative hearing is not the appropriate venue in which raise constitutional issues, the Department makes no finding as to Taxpayer's objections on constitutional grounds.

In conclusion, the Department adjusted Taxpayer's adjusted gross income tax return because Taxpayer had failed to include the activities from the two Indiana fabrication plants (one operated by Taxpayer's Division and the other operated by Partnership) in its apportionment factors. Taxpayer, as the reporting entity for Taxpayer's Division, must include the income and activities of the Indiana fabrication plant operated by Taxpayer's Division in its adjusted gross income tax return, including the apportionment factors. IC § 6-3-2-2. In addition, Taxpayer, as the reporting entity for Taxpayer's Division, is a corporate partner in Partnership. Taxpayer, as the corporate partner, is liable for Partnership's adjusted gross income tax in its separate or individual capacity and is required to report its portion of Partnership's Indiana business activity on Taxpayer's Indiana adjusted gross income tax return, pursuant to IC § 6-3-4-11(a). Since Taxpayer owns ninety-nine percent of Partnership, Taxpayer is required to report its ninety-nine percent partner share of Partnership's income and activities in its apportionment factors, as provided in 45 IAC 3.1-1-153. Therefore, Taxpayer's protest of the Department's adjustments to its return to include the operational business income and activities of the two Indiana fabrication plants in Taxpayer's apportionment factors is denied.

FINDING

Taxpayer's protest of the adjustments that the Department made to its apportionment factors is denied.

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